

RECEIVED

DUPLICATE JUL 31 1991

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re the Applications of)
JEFFERY SCOTT) File No. BPH-910213ME
EICHER COMMUNICATIONS, INC.) File No. BPH-910213MF
For Construction Permit for)
new FM station on Channel 278)
at Bethany Beach, Delaware)

To: The Chief, Mass Media Bureau

JOINT REQUEST FOR APPROVAL OF SETTLEMENT AGREEMENT

EICHER COMMUNICATIONS, INC. ("Eicher") and JEFFERY SCOTT ("Scott"),^{1/} pursuant to Section 311(c) of the Communications Act of 1934, as amended, 47 U.S.C. §311(c) (1990), and Section 73.3525 of the Commission's Rules, 47 C.F.R. §73.3525, hereby request that the Commission approve the settlement agreement between the Joint Parties, a copy of which is contained in Appendix 1 of this Joint Request.^{2/}

1. The Agreement between Eicher and Scott provides for the dismissal of either Eicher or Scott's application, depending upon the Commission's resolution of Eicher's "Petition to Dismiss or

^{1/} Collectively, hereinafter the "Joint Parties."

^{2/} As a result of a typographical error in Paragraph 4 of the appended "Agreement," which changed the spacing of the Agreement after it had been executed by Eicher's President, Elaine C. Eicher, Appendix 1 contains only the executed signature page of Scott's principal, Jeffery Scott. Eicher has approved the Agreement. However, Appendix 2 contains the signature of Mrs. Eicher on the Declaration required by Section 73.3525 of the Rules. In addition, as can be seen on page 1 of the Agreement, Mrs. Eicher has initialed the Agreement. Eicher will supplement this Joint Request to include the signature page of Mrs. Eicher as soon as possible.

Deny" the Scott application, which Eicher filed on June 17, 1991, and responsive pleadings.

2. Essentially, if the Commission grants the Eicher Petition and either dismisses or denies the Scott application, Scott agrees to forego his rights of appeal on the dismissal of his application. In consideration of Scott's (1) agreeing to forego an appeal and (2) filing an affirmative dismissal of his application upon grant of Eicher's Petition, Eicher will pay Scott the sum of \$15,000.00.

3. In contrast, if the Commission either dismisses or denies the Eicher Petition, then Eicher agrees not to appeal the Commission decision and will not file a notice of appearance, which will allow for the grant of the Scott application. In consideration of Eicher's (1) foregoing any appeal of the dismissal or denial of the Petition and (2) not proceeding to hearing, Scott agrees to pay Eicher the sum of \$35,000.00.

4. Although grant of the Joint Request and approval of the Agreement will not result in an immediate termination of the proceeding, it is still in the public interest. Grant of the Joint Request and approval of the Agreement will eliminate a comparative hearing for the Bethany Beach station, as well as attendant appeals, which would otherwise delay inauguration of service on Channel 278 at Bethany Beach. Further, approval of the Agreement will save Commission resources involved in a hearing, as well as those of the Joint Parties.

5. In all respects, the Agreement and this Joint Request comply with Section 73.3525 of the Rules. The Agreement recites

that it is the complete agreement of the Joint Parties. Further, the principal of each applicant has stated under penalty of perjury that neither Eicher nor Scott filed its application for the purpose of effectuating a settlement.

WHEREFORE, in light of the foregoing, Eicher and Scott respectfully request that the Commission (1) grant this Joint Petition and (2) approve the Agreement contained in Appendix 1.

Respectfully submitted,

EICHER COMMUNICATIONS, INC.


By: 

Stephen Diaz Gavin
BESOZZI & GAVIN
1901 L Street, N.W.
Suite 200
Washington, D.C. 20036
(202) 293-7405

Its Counsel

JEFFERY SCOTT

By: 

Dennis P. Corbett
Stephen D. Baruch
LEVENTHAL SENTER & LERMAN 
2000 K Street, N.W.
Suite 600
Washington, D.C. 20006
(202) 429-8970

Its Counsel

Dated: July 31, 1991
0745/joint.mot

APPENDIX 1

AGREEMENT

This Agreement is made this 31st day of July, 1991, by and between Eicher Communications, Inc. ("Eicher"), a Delaware corporation, and Jeffery Scott ("Scott"), an individual residing in the State of Delaware (collectively hereinafter the "Parties").

WHEREAS, Eicher has an application pending before the Federal Communications Commission ("FCC" or the "Commission"), FCC File No. BPH-910213MF, for authority to construct a new FM radio station on Channel 278 at Bethany Beach, Delaware (the "Station"); and

WHEREAS, Scott has filed a mutually exclusive application, FCC File No. BPH-910213ME, for the same Station; and

WHEREAS, Eicher and Scott are the only mutually exclusive applicants for the Station; and

WHEREAS, on June 17, 1991, Eicher filed a "Petition to Dismiss or Deny" Scott's application for the Station (the "Petition"), to which Scott has filed an Opposition, dated July 2, 1991, and Eicher, in turn a Reply pleading, dated July 15, 1991, and

WHEREAS, the Parties anticipate that the Petition and the responsive pleadings will be acted upon by the Commission prior to or in conjunction with the designation of the applications for hearing; and

WHEREAS, the Parties wish to avoid extended and costly legal proceedings before the Commission, which impose burdens on the Commission's staff and resources, as well as require the expenditure of considerable resources by both Eicher and Scott; and


ECE


JS

AGREEMENT

This Agreement is made this 31st day of July, 1991, by and between Eicher Communications, Inc. ("Eicher"), a Delaware corporation, and Jeffery Scott ("Scott"), an individual residing in the State of Delaware (collectively hereinafter the "Parties").

WHEREAS, Eicher has an application pending before the Federal Communications Commission ("FCC" or the "Commission"), FCC File No. BPH-910213MF, for authority to construct a new FM radio station on Channel 278 at Bethany Beach, Delaware (the "Station"); and

WHEREAS, Scott has filed a mutually exclusive application, FCC File No. BPH-910213ME, for the same Station; and

WHEREAS, Eicher and Scott are the only mutually exclusive applicants for the Station; and

WHEREAS, on June 17, 1991, Eicher filed a "Petition to Dismiss or Deny" Scott's application for the Station (the "Petition"), to which Scott has filed an Opposition, dated July 2, 1991, and Eicher, in turn a Reply pleading, dated July 15, 1991, and

WHEREAS, the Parties anticipate that the Petition and the responsive pleadings will be acted upon by the Commission prior to or in conjunction with the designation of the applications for hearing; and

WHEREAS, the Parties wish to avoid extended and costly legal proceedings before the Commission, which impose burdens on the Commission's staff and resources, as well as require the expenditure of considerable resources by both Eicher and Scott; and

ECE

JS
38

WHEREAS, the Parties can agree to a resolution of their differences on the basis of the terms and conditions set forth below which will involve the dismissal of either application and grant of the other; and

WHEREAS, Section 311(c) of the Communications Act of 1934, as amended, 47 U.S.C. §311(c), and Section 73.3525 of the Commission's Rules, 47 C.F.R. §73.3525, require the prior approval of the Commission whenever one applicant will dismiss its application for consideration;

NOW, THEREFORE, in consideration of the mutual promises contained in this Agreement, the Parties agree as follows:

1. Dismissal of Scott's Application. In the event that the Commission or its delegated authority grants Eicher's Petition, Scott shall dismiss his application, as set forth in Paragraphs 4 and 5 below and further agrees not to file an appeal, reconsideration or review of the grant of the Petition and dismissal or denial of his application. A failure of the Commission to dismiss or deny Scott's application in ruling upon Eicher's Petition shall be treated as dismissal or denial of Eicher's Petition.

2. Dismissal of Eicher's Application. In the event that the Commission or its delegated authority denies Eicher's Petition and designates both the Scott and the Eicher applications for comparative hearing, Eicher will not file a notice of appearance

ECE

95
JS

and further agrees that Eicher will dismiss its application, as set forth in Paragraphs 4 and 5 below and not seek appeal, reconsideration or review of the adverse decision on Eicher's Petition.

3. Settlement Payment.

a. In consideration of the dismissal of Scott's application pursuant to Paragraph 1, supra, Eicher agrees to pay Scott the sum of Fifteen Thousand Dollars and No Cents (\$15,000.00).

b. In consideration of the dismissal of Eicher's application pursuant to Paragraph 2, supra, Scott agrees to pay Eicher the sum of Thirty-Five Thousand Dollars and No Cents (\$35,000.00).

4. Conditions for Settlement Payment by the Prevailing Applicant. The party that dismisses its application pursuant to either Paragraph 1 or 2 of this Agreement shall be referred to as the "Dismissing Applicant." The party that does not dismiss its application, in accordance with the terms and conditions of this Agreement shall be referred hereto as the "Prevailing Applicant." Payment of the Settlement Payment by the Prevailing Applicant to the Dismissing Applicant shall be expressly conditioned upon the following:

a. The issuance by the Commission or its delegated authority of the decision that grants, denies or dismisses Eicher's Petition (the "Decision").

ECE

95
JS

b. No later than five (5) days from the "public notice" of the Decision, as that term is defined by Section 1.4 of the Rules and Regulations of the Commission, 47 C.F.R. §1.4, the receipt by counsel for the Prevailing Applicant of the "Request for Dismissal" from the Dismissing Applicant provided for in Paragraph 5 below, which copy of the Request shall bear the stamp of the Office of the Secretary of the FCC as having been received.

No later than five (5) days from the receipt by counsel for the Prevailing Applicant of the "Request for Dismissal" referred to in Subparagraph (b), counsel for the Prevailing Applicant shall deposit the Settlement Payment in his law firm's escrow account. Counsel for the Prevailing Applicant shall immediately notify counsel for the Dismissing Applicant that the Settlement Payment has been deposited in the escrow account. No later than five (5) days after either the "Request for Dismissal" or the grant of the Prevailing Applicant becomes a "final" action, i.e., an action pursuant to the rules and regulations of the Commission that is no longer subject to appeal, reconsideration or review, whichever occurs first, counsel for the Prevailing Applicant shall deliver the Settlement Payment in a certified check to counsel for the Dismissing Applicant. Interest accrued on the Settlement Payment shall be refunded to the Prevailing Applicant.

5. Request for Dismissal. Eicher and Scott each agrees to file a "Request for Dismissal" in the form set out in Attachment 1 hereto in the event that either is the Dismissing Applicant. The Parties agree that prompt delivery to the Commission of a

ECE

JS

"Request for Dismissal" by the Dismissing Applicant is necessary to conserve the resources otherwise spent in connection with a comparative hearing. Accordingly, concurrently with the execution of this Agreement, Scott and Eicher shall each execute but not date a "Request for Dismissal" in the form contained in Attachment 1 hereto. In the event that the Prevailing Applicant has not received the "Request for Dismissal" provided for in Section 4(b) above signed and dated by the Dismissing Applicant within five (5) days of the Release Date of the Decision, Eicher and Scott authorize each other, whichever is the Prevailing Applicant, to date the previously executed "Request for Dismissal" for the Dismissing Applicant, file such Request with the Secretary of the FCC, and deliver a copy thereof date stamped by the Secretary's Office, together with the Settlement Payment to the Dismissing Applicant.

6. As soon as possible after the execution of this Agreement, but in no event later than July 31, 1991, the Parties shall file this agreement with the Commission, together with a joint request pursuant to Section 73.3525 of the Commission's Rules for Commission approval of this agreement and of all of the obligations of the Parties set forth herein, and together with all supporting documentation required by Section 73.3525 of the Commission's Rules, specifically the "Declarations," copies of which are Attachment 2 hereto.

ECE

JS

7. This agreement is entered into subject to approval by the Commission. If the Commission conditions its approval or declines to approve any provision of this agreement, the Parties agree to proceed in good faith to resolve any Commission conditions or objections so as to secure approval of an agreement which most nearly reflects the original intentions of the parties as reflected herein. In the event final approval is not secured, this Agreement is null and void.

8. Eicher and Scott agree to cooperate with each other and with the Commission by expeditiously providing each other or the Commission, or both, with any additional information which may reasonably be required, by expeditiously filing any additional documents which may be necessary or appropriate to comply with Section 73.3525 of the Commission's Rules or to effectuate the objectives of this agreement, and by warranting that it will take no position inconsistent with the terms of this agreement or with the prompt finality of approval thereof.

9. This agreement is the only agreement between the Parties and contains all of the terms and conditions agreed upon with respect to the subject matter hereof. No additional consideration has been or will be promised to be paid to any of the Parties. This Agreement shall be binding upon the parties hereto, the principals of the parties, their successors and assigns.

10. Eicher hereby warrants and represents that the action

ECE

JS

taken by its signatory below in executing this Agreement is a lawful action warranted and approved by Eicher and its shareholder.

11. The Parties agree that this agreement may be executed in counterparts, all of which together, so executed, shall constitute one and the same instrument. However, each Party shall deliver to the other Party an original signature "Request for Dismissal" provided for by Paragraph 5 within five (5) days of the execution of this Agreement.

12. This agreement shall be construed under the laws of the State of Delaware.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the day and date first written above.

EICHER COMMUNICATIONS, INC.
a Delaware corporation

By: Elaine C. Eicher, President

JEFFERY SCOTT


Jeffery Scott

ATTACHMENT 1

REQUEST FOR DISMISSAL

Pursuant to a Settlement Agreement, dated July 31, 1991, an executed copy of which is Attachment 1 hereto, Eicher Communications, Inc. ("Eicher") requests dismissal of its application for a new FM station at Bethany Beach, Delaware, FCC File No. BPH-910213MF.

Attachment 2 contains a copy of the Commission's previous approval of the "Joint Request for Approval of Settlement Agreement" between Eicher and Jeffery Scott, the only other mutually exclusive applicant for Channel 278 at Bethany Beach.

The release of the Commission's decision, as provided for in Paragraph 4 of the Agreement, requires the submission of this Request for Dismissal by Eicher.

Attachment 3 contains a copy of the Commission's decision triggering the requirement for Eicher to submit this "Request for Dismissal."

Dated: _____

Elaine C. Eicher
President

REQUEST FOR DISMISSAL

Pursuant to a Settlement Agreement, dated July 31, 1991, an executed copy of which is Attachment 1 hereto, Jeffery Scott ("Scott"), an individual applicant, requests dismissal of his application for a new FM station at Bethany Beach, Delaware, FCC File No. BPH-910213ME.

Attachment 2 contains a copy of the Commission's previous approval of the "Joint Request for Approval of Settlement Agreement" between Jeffery Scott and Eicher Communications, Inc. ("Eicher"), the only other mutually exclusive applicant for Channel 278 at Bethany Beach.

The release of the Commission's decision, as provided for in Paragraph 4 of the Agreement, requires the submission of this Request for Dismissal by Scott.

Attachment 3 contains a copy of the Commission's decision triggering the requirement for Scott to submit this "Request for Dismissal."

Dated: _____

Jeffery Scott

ATTACHMENT 2

DECLARATION

Elaine C. Eicher, under penalty of perjury, states as follows:

1. I am the sole shareholder and the President of Eicher Communications, Inc. ("Eicher"), a Delaware corporation, an applicant for authority to construct a new FM radio station on Channel 278 at Bethany Beach, Delaware, FCC File No. BPH-910213MF.

2. Eicher has entered into an agreement with Jeffery Scott ("Scott"), an individual applicant for the same facilities, to settle the Bethany Beach proceeding. That agreement contemplates dismissal of the application of either Eicher or Scott depending upon the Commission resolution of Eicher's "Petition to Dismiss or Deny" against the Scott application, which was filed June 17, 1991. In consideration therefor, the Prevailing Applicant shall pay to the Dismissing Applicant an amount set forth in the Settlement Agreement.

3. Approval of this agreement is in the public interest, for the reasons set forth therein.

4. The application of Eicher was not filed for the purpose of reaching or carrying out the agreement.

Dated: _____

Elaine C. Eicher, President
Eicher Communications, Inc.

DECLARATION

Jeffery Scott, under penalty of perjury, states as follows:

1. I am an individual applicant for a new FM station at Bethany Beach, Delaware on Channel 278, FCC File No. BPH-910213ME.

2. Scott has entered into an agreement with Eicher Communications, Inc. ("Eicher"), an applicant for the same facilities, to settle the Bethany Beach proceeding. That agreement contemplates dismissal of the application of either Eicher or Scott depending upon Commission resolution of Eicher's "Petition to Dismiss or Deny" against the Scott application, which was filed June 17, 1991. In consideration therefor, the Prevailing Applicant shall pay to the Dismissing Applicant an amount set forth in the Settlement Agreement.

3. Approval of this agreement is in the public interest, for the reasons set forth therein.

4. The application of Scott was not filed for the purpose of reaching or carrying out the agreement.

Jeffery Scott

APPENDIX 2

DECLARATION

Elaine C. Eicher, under penalty of perjury, states as follows:

1. I am the sole shareholder and the President of Eicher Communications, Inc. ("Eicher"), a Delaware corporation, an applicant for authority to construct a new FM radio station on Channel 278 at Bethany Beach, Delaware, FCC File No. BPH-910213MF.

2. Eicher has entered into an agreement with Jeffery Scott ("Scott"), an individual applicant for the same facilities, to settle the Bethany Beach proceeding. That agreement contemplates dismissal of the application of either Eicher or Scott depending upon the Commission resolution of Eicher's "Petition to Dismiss or Deny" against the Scott application, which was filed June 17, 1991. In consideration therefor, the Prevailing Applicant shall pay to the Dismissing Applicant an amount set forth in the Settlement Agreement.

3. Approval of this agreement is in the public interest, for the reasons set forth therein.

4. The application of Eicher was not filed for the purpose of reaching or carrying out the agreement.

Dated: July 31, 1991

Elaine C. Eicher
Elaine C. Eicher, President
Eicher Communications, Inc.

DECLARATION

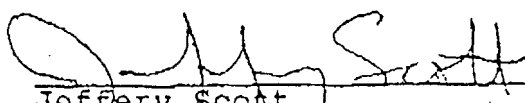
Jeffery Scott, under penalty of perjury, states as follows:

1. I am an individual applicant for a new FM station at Bethany Beach, Delaware on Channel 278, FCC File No. BPH-910213ME.

2. Scott has entered into an agreement with Eicher Communications, Inc. ("Eicher"), an applicant for the same facilities, to settle the Bethany Beach proceeding. That agreement contemplates dismissal of the application of either Eicher or Scott depending upon Commission resolution of Eicher's "Petition to Dismiss or Deny" against the Scott application, which was filed June 17, 1991. In consideration therefor, the Prevailing Applicant shall pay to the Dismissing Applicant an amount set forth in the Settlement Agreement.

3. Approval of this agreement is in the public interest, for the reasons set forth therein.

4. The application of Scott was not filed for the purpose of reaching or carrying out the agreement.


Jeffery Scott

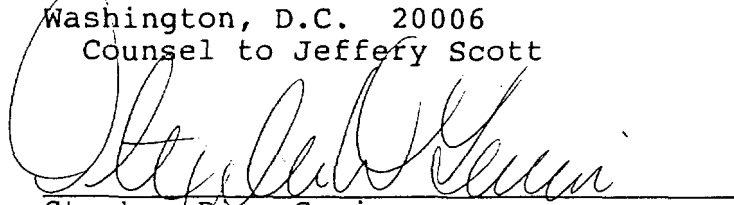
July 31, 1991

CERTIFICATE OF SERVICE

I, Stephen Diaz Gavin, a partner in the law firm of Besozzi & Gavin, do hereby certify that I have, on this 31st day of July, 1991, sent the foregoing "JOINT REQUEST FOR APPROVAL OF SETTLEMENT AGREEMENT" by U.S. mail, first class, postage-prepaid, to the following:

Larry D. Eads
Chief, Audio Services Division
Mass Media Bureau
Federal Communications Commission
1919 M Street, N.W. Room 302
Washington, D.C. 20554

Dennis P. Corbett, Esquire
Leventhal Senter & Lerman
2000 K Street, N.W. Suite 600
Washington, D.C. 20006
Counsel to Jeffery Scott



Stephen Diaz Gavin